FIMBANK PLC v. THE OWNERS AND/OR DEMISE CHARTERERS OF THE SHIP OR VESSEL "NIKA" NOW KNOWN AS "BAO LAI"

HIGH COURT MALAYA, KUALA LUMPUR
AZLAN SULAIMAN JC
[ADMIRALTY IN REM NO: WA-27NCC-37-05-2019]
31 MAY 2022

Abstract – *The inherent powers of the court should only be exercised where there is a lacuna in the rules and practice of the court. There is no lacuna in O. 6 r. 7(2) of the Rules of Court 2012 that prescribes the maximum number of times a writ in rem could be extended ie, five times. Therefore, the application, seeking the invocation of the court's inherent powers and jurisdiction to extend the duration and validity of the writ in rem in question for the sixth time, is bound to fail.*

CIVIL PROCEDURE: *Admiralty – Writ in rem – Extension of duration and validity – Writ already extended for five times – Writ remained unserved on vessel – Vessel had not been into Malaysian waters – Whether court could invoke inherent powers and jurisdiction to extend duration and validity of writ in rem – Whether there is lacuna in rules or practice of court to enable court to invoke inherent jurisdiction – Whether writ could be extended for sixth time – Rules of Court 2012, O. 6 r. 7(2) & O. 92 r. 4*

CIVIL PROCEDURE: *Jurisdiction – Inherent jurisdiction – Application to extend duration and validity of writ in rem – Writ remained unserved on vessel – Vessel had not been into Malaysian waters – Whether court could invoke inherent powers and jurisdiction to extend duration and validity of writ in rem – Whether there is lacuna in rules or practice of court to enable court to invoke inherent jurisdiction – Whether writ could be extended for sixth time – Rules of Court 2012, O. 6 r. 7(2) & O. 92 r. 4*

In this application, the plaintiff sought the court to invoke its inherent powers and jurisdiction to extend the duration and validity of the writ *in rem* herein, which had been extended five times, for the sixth time. Additionally, the plaintiff relied on O. 3 r. 5(1) of the Rules of Court 2012 ('ROC') to extend the said writ. The writ in this case remained unserved on the vessel and the following were the plaintiff's reasons for not having done so: (i) the plaintiff had been constantly and diligently monitoring the movement of the vessel to see whether or not it has been into Malaysian waters, and to the best of the plaintiff's knowledge, it had not done so in all that time for service to be effected; and (ii) as the vessel had not been into Malaysian waters in all that

time, the plaintiff had not had any reasonable opportunity to effect service and non-service was not from any default or lack of effort by the plaintiff. As for the injustice that would be caused to the plaintiff if the validity of the writ was not extended, the plaintiff submitted that: (i) at the time the cargo was shipped on the vessel, the vessel belonged to Discover Investment Corp ('Discover Investment'). However, the ownership of the vessel had changed hands three times before it ended up with the current owner, Bao Yi Shipping Co. ('Bao Yi'); (ii) the effect of the transfer of ownership was that the plaintiff could not issue a fresh admiralty *in rem* writ for the same claim because such writ could ostensibly be against Bao Yi who would not be liable and would bear no responsibility for the plaintiff's claim *in personam*; (iii) nor could the plaintiff file a fresh writ against Discover Investment because any new claim now would be barred by limitation; (iv) the plaintiff could not be blamed for the non-services of the writ and therefore should not be penalised by a procedural rule that was primarily intended to prevent a plaintiff's lack of action and abuse; and (v) if the writ was not renewed, the plaintiff would be deprived of its substantive rights through no fault of its own and would be deprived of its remedies in law. The issue that arose was whether the court could use its inherent powers and jurisdiction, under O. 92 r. 4 of the ROC, to extend the writ for a sixth time and thereby override the express terms of O. 6 r. 7(2) of the ROC which allows the duration and validity of a writ in admiralty actions to be extended only five times.

Held (dismissing application):

(1) The court could not exercise its inherent power in this case for two reasons: (i) the inherent powers of the court should only be exercised where there is a *lacuna* in the rules. The adjunct to that is that, where there is no *lacuna* and the rules contain provisions for a given scenario, the court would not invoke its inherent jurisdiction. There is no *lacuna* here as O. 6 r. 7(2) of the ROC prescribes the maximum number of times a writ *in rem* could be extended; and (ii) the renewal of a writ is only needed if service is not effected during its validity. That is evident from the words in O. 6 r. 7(2) of the ROC. Thus, the purpose of this rule was exact and was only for renewing the validity of writs that have yet to be served. (paras 2 & 33)

(2) The rule in O. 3 r. 5(1) of the ROC is to 'extend or abridge the period within which a person is required or authorised by these Rules or by any judgment, or order or direction to do any act in any proceedings'. It is a general provision. Under the principle of *generalibus specialia non derogant*, the court is bound to apply O. 6 r. 7 of the ROC for all matters regarding extensions of writ because it is specific to that issue. (para 53)

Case(s) referred to:

Arab-Malaysian Credit Bhd v. Tan Seang Meng [1995] 1 CLJ 773 CA ***(refd)***

Duli Yang Amat Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj v. Datuk Captain Hamzah Mohd Noor & Another Appeal [2009] 4 CLJ 329 FC ***(refd)***

Hatara (M) Sdn Bhd v. Petroliam Nasional Bhd & Anor [2010] 3 CLJ 550 CA ***(refd)***

Joseph Clement Louis Arokiasamy v. Singapore Airlines Ltd [2020] 5 SLR 869 ***(refd)***

Lee Siew Ngug And Others v. Lee Brothers (Wee Kee) Pte Ltd And Another [2015] 3 SLR 1093 ***(refd)***

National Union Of Bank Employees v. Director General Of Trade Unions & Anor [2013] 7 CLJ 957 FC ***(refd)***

Pan United Shipyard Pte Ltd v. The Ship 'Rodolfo Mata' [2004] FCA 117 ***(refd)***

Permodalan MBF Sdn Bhd v. Tan Sri Datuk Seri Hamzah Abu Samah & Ors [1988] 1 CLJ 31; [1988] 1 CLJ (Rep) 244 SC ***(refd)***

Samsung Corp v. Chinese Chamber Realty Pte Ltd [2004] 1 SLR (R) 382 ***(refd)***

Sim Seoh Beng & Anor v. Koperasi Tunas Muda Sungai Ara Bhd [1995] 1 CLJ 491 CA ***(refd)***

South Johor Securities Sdn Bhd v. Alexander Codsi [2007] 9 CLJ 145 HC ***(refd)***

Syed Ahmad Jamal Alsagoff & Ors v. Harun Syed Hussain Aljunied & Ors [2017] 5 SLR 299 ***(refd)***

The Chong Bong [1997] 3 HKC 579 ***(refd)***

The Berny [1979] QB 80 ***(refd)***

The Lircay [1997] 1 SLR(R) 699 ***(refd)***

Yomeishu Seizo Co Ltd & Ors v. Sinma Medical Products (M) Sdn Bhd [1996] 2 BLJ 142 HC ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 1A, O. 3 r. 5(1), O. 6 r. 7(1), (2), (2A), O. 7 r. 6(2), O. 70 r. 7(1), (10), O. 92 r. 4

Rules of the High Court 1980, O. 6 r. 7(2), O. 7 r. 6(2)

Rules of Court 2021 [Sing], O. 6 r. 3

For the plaintiff - Arun Krishnalingan & John Rolan; M/s Christopher & Lee Ong

Reported by Lina E

JUDGMENT
(Encl. 46)

Azlan Sulaiman JC:

Overview

[1] By encl. 46, the plaintiff is applying to extend the duration and validity of the writ in rem herein first filed on 17 May 2019 and extended five times, for a sixth time.

[2] Given that O. 6 r. 7(2) of the Rules of Court 2012 ("Rules") expressly allows the duration and validity of a writ in admiralty actions to be extended only five times, the plaintiff is in effect requesting the court to use its inherent jurisdiction and powers to extend it for that sixth time, on the grounds that, if it is not so extended, there will be an injustice to the plaintiff.

[3] This judgment shall examine whether the court should do so.

Salient Background Facts

[4] On 17 May 2019, the plaintiff filed the writ in rem in this action against "The Owners and/or Demise Charterers of The Ship or Vessel "NIKA"". The writ contained the following endorsement of claim:

> The Plaintiffs, as persons entitled to immediate possession of and/or having other legal or equitable interests in and/or having rights of suit in respect of a cargo of approximately 17,300 MT of Ukrainian Milling Wheat from the Latest Crop (2017) (the "Cargo") shipped on board the vessel "NIKA" (IMO No. 9254513) (the "Vessel") for carriage from Chornomorsk, Ukraine to one Egyptian Mediterranean Port under the bills of lading BL nos. 1 to 26 and BL No. 61 dated on or about 22 March 2018 ("Bills of Lading"), and/or as lawful holders and/or indorsees of the Bills of Lading, claim against the Defendants as carriers and/or persons being in physical possession of the Cargo. The Plaintiffs' claims are for:
>
> (a) Damages for breach of the contract(s) of carriage contained in and/or evidenced by the Bills of Lading, and/or breach of duty, and/or negligence, and/or breach of duty as bailees, and/or wrongful interference, and/or injury to the Plaintiffs' interests in the Cargo by the Defendants, their servants and/or agents in and about the bailment, loading, stowage, handling, custody, care, discharge and delivery of the Cargo and the shipment and carriage thereof on board the Vessel on or around the date and for the voyage as specified in the Bills of Lading, and/or for a declaration for indemnity in respect of all loss, liability, costs and/or expenses suffered and/or incurred or which may be suffered and/or incurred by the Plaintiffs as a result of the Defendant's breaches as aforesaid;
>
> (b) Interest;
>
> (c) Costs; and
>
> (d) Such further or other relief as this Honourable Court deems fit.

[5] Under O. 70 r. 7(1) of the Rules, "a writ by which an action in rem is begun shall be served on the property against which the action is brought." In other words, the writ was to be served on the vessel itself, in the manner prescribed by O. 70 r. 10, and substituted service could neither be ordered nor effected.

[6] It also necessarily follows that the writ could only be served on the vessel if it comes into Malaysian waters.

[7] As with all writs, under O. 6 r. 7(1) of the Rules, the writ "is valid at first instance for six months beginning from the date of its issue". Thus, having been filed on 17 May 2019, the writ was valid at first instance until 16 November 2019.

[8] The combined effect of these two provisions was that the plaintiff was required to serve the writ on the vessel on or before 16 November 2019. If it served the writ beyond that date, *ie*, beyond the period of its validity, the service would be bad in law and any judgment entered on that would also be bad in law and liable to be set aside *ex debito justitiae*.

[9] Order 6 rr. 7(2) and (2A) of the Rules provide the remedy for plaintiffs who are unable to serve their writs on the defendant(s) during its validity. These provide:

Order 6 rule 7(2)

> Subject to paragraph (2A), where efforts to serve a writ on a defendant have been unsuccessful the Court may by order extend the validity of the writ twice (in Sabah and Sarawak thrice and in admiralty actions five times), not exceeding six months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order.

Order 6 rule 7(2A)

> An application for a renewal of writ must be made before the expiry of the writ, *ex parte* by notice of application supported by affidavit showing that efforts have been made to serve the defendant within one month from the date of the issue of the writ and that efforts have been made subsequent thereto to effect service.

[10] Until now, the writ in this case remains unserved as the vessel has apparently not been into Malaysian waters since the writ was issued in May 2019 for service to be effected. Prior to this, the plaintiff has accordingly made five applications and this court has made corresponding orders on them extending the writ five times. The dates of the plaintiff's applications, the orders and the extended durations of the writ are set out in Table A below:

Extension	Application	Order	Duration
First	15.11.2019	5.12.2019	17.11.2019 - 16.5.2020
Second	6.5.2020	15.5.2020	17.5.2020 - 16.11.2020
Third	16.11.2020	16.11.2020	17.11.2020 - 16.5.2021
Fourth	5.5.2021	11.5.2021	17.5.2021 - 16.11.2021
Fifth	10.11.2021	15.11.2021	17.11.2021 - 16.5.2022

The Plaintiff's Case

[11] The plaintiff cites the following facts for not having served the writ on the vessel since the writ was filed and, in this case, since 17 November 2021:

(i) the vessel has not been into Malaysian waters in all that time for service to be effected;

(ii) the plaintiff has been constantly and diligently monitoring the movement of the vessel through the use of the services provided by Lloyd's List Intelligence and/or Marine Traffic, to see whether or not is has been into Malaysian waters, and to the best of the plaintiff's knowledge it has not done so; and

(iii) as the vessel has not been into Malaysian waters in all that time, the plaintiff has not had any reasonable opportunity to effect service, and non-service is not from any default or lack of effort by the plaintiff.

[12] In support of this, the plaintiff cited the case of *Duli Yang Amat Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj v. Datuk Captain Hamzah Mohd Noor & Another Appeal* [2009] 4 CLJ 329; [2009] 4 MLJ 149 in which Zaki Azmi CJ said:

> I strongly believe that O. 6 r. 7(2A) of the RHC was introduced to prevent abuse by the plaintiffs in filing writs and sleeping on them without making efforts to serve them.
>
> This practice of inactivity is something which courts loathe. It is against the administration of justice. It creates a backlog and results in a false number of pending cases. In my opinion, courts should take serious a view of such cases. If not, they will continue to remain in the list of outstanding cases. As such, O. 6 r. 7(2A) of the RHC must be strictly enforced as required by the rule.
>
> When the plaintiffs apply to extend the validity of writs, courts should examine closely the affidavits filed in support of applications for extensions. Before granting an extension, courts must be satisfied that serious efforts had been made to serve. A simple and plain statement that efforts had been made to serve cannot be a sufficient ground. The affidavits must provide detailed facts as to when, where and how attempts to serve were made. Otherwise O. 6 r. 7(2A) of the RHC will become a dead letter. The object of the rule will be defeated.

[13] The plaintiff further cited many, many authorities, including decisions of the Courts of Singapore, Hong Kong, Australia and England, that the absence of the vessel from their waters was a good ground for extending the writ. These were:

(i) *The Lircay* [1997] 1 SLR(R) 699;

(ii) *Pan United Shipyard Pte Ltd v. The Ship 'Rodolfo Mata'* [2004] FCA 117;

(iii) *The Chong Bong* [1997] 3 HKC 579; and

(iv) *The Berny* [1979] QB 80.

[14] As for the injustice that will be caused to the plaintiff if the validity of the writ is not extended, the plaintiff's case was as follows: A

(i) at the time the cargo was shipped on the vessel, the vessel belonged to Discover Investment Corp. However, the ownership of the vessel has subsequently changed hands three times, from Discover Investment Corp to Anchor Nautical SA to Bluefish Marine Corp to Bao Yi Shipping Co. Ltd, its current owners; B

(ii) the effect of these transfers of ownership is that the plaintiff cannot issue a fresh admiralty in rem writ for the same claim because such writ would ostensibly be against the current owner, Bao Yi Shipping Co. Ltd, who will not be liable and will bear no responsibility for the plaintiff's claim *in personam*; C

(iii) nor can the plaintiff file a fresh writ against Discover Investment Corp because any new claim now would be barred by limitation;

(iv) the plaintiff cannot be blamed for non-service of the writ, and therefore it should not be penalised by a procedural rule that is primarily intended to prevent a plaintiff's lack of action and abuse; and D

(v) if the writ was not renewed, the plaintiff would be deprived of its substantive rights through no fault of its own and would be deprived of its remedies in law. That in itself would be manifestly unjust, and contrary to the administration of justice, which could never have been the intent of the five-time extension limit under O. 7 r. 6(2) of the Rules. E

[15] Learned counsel for the plaintiff also submitted that the court could also extend the writ for a sixth time by resort to the provisions of O. 3 r. 5 of the Rules *ie*, extension of time, and cited the following authorities: F

(i) Order 1A of the Rules of Court 2012;

(ii) Order 3 r. 5(1) of the Rules of Court 2012;

(iii) *National Union Of Bank Employees v. Director General Of Trade Unions & Anor* [2013] 7 CLJ 957; [2013] 6 MLJ 167. G

[16] As for using the court's inherent powers and jurisdiction to extend the writ for a sixth time, learned counsel for the plaintiff submitted that this was "an exceptional situation for which the interests of justice warrant the exercise of the Honourable Court's powers", and urged this court to do so to overcome the injustice that would be caused to it through no fault of its own. He also submitted that the court's powers could be used to overcome this lacuna in the law. H

[17] As for using the court's inherent powers and jurisdiction, the plaintiff relied on the following: I

A (i) *Arab-Malaysian Credit Bhd v. Tan Seang Meng* [1995] 1 CLJ 773; [1995] 1 MLJ 525;

(ii) *Hatara (M) Sdn Bhd v. Petroliam Nasional Bhd & Anor* [2010] 3 CLJ 550; [2010] 4 MLJ 17;

B (iii) *Sim Seoh Beng & Anor v. Koperasi Tunas Muda Sungai Ara Bhd* [1995] 1 CLJ 491; [1995] 1 MLJ 292;

(iv) Order 92 r. 4 of the Rules of Court 2012;

(v) *Yomeishu Seizo Co Ltd & Ors v. Sinma Medical Products (M) Sdn Bhd* [1996] 2 BLJ 142; [1996] 2 MLJ 334;

C

(vi) *Lee Siew Ngug & Others v. Lee Brothers (Wee Kee) Pte Ltd & Another* [2015] 3 SLR 1093;

(vii) *Syed Ahmad Jamal Alsagoff & Ors v. Harun Syed Hussain Aljunied & Ors* [2017] 5 SLR 299; and

D

(viii) *Joseph Clement Louis Arokiasamy v. Singapore Airlines Ltd* [2020] 5 SLR 869.

[18] Learned counsel for the plaintiff further pointed out that the courts in other Commonwealth jurisdictions like England, Singapore, Hong Kong and E Australia had granted numerous extensions of writs in admiralty in rem actions for as long as the vessel did not enter their waters.

[19] The plaintiff also strongly urged the court to follow *Arab-Malaysian Credit Bhd v. Tan Seang Meng* [1995] 1 CLJ 773; [1995] 1 MLJ 525 in which the Court of Appeal used its inherent powers to overcome a limitation in the F (then) O. 6 r. 7(2) of the Rules of the High Court 1980.

[20] In that case, the plaintiff had granted banking facilities to a company which the defendant had guaranteed repayment of. When the plaintiff could not personally serve the writ, it had filed on August 1985 on the defendant, it applied for substituted service, and did so upon obtaining the order. When G the defendant then failed to enter an appearance, in May 1986 the plaintiff entered default judgment against him. It was only in August 1992 under threat of bankruptcy that the defendant applied to set aside the judgment. He succeeded in doing so on the ground that the substituted service was fatally flawed. As a result, the writ was deemed to have never been served on him.

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[21] The setting aside of the service of the writ meant that the plaintiff had to reserve it on the defendant. But that left the plaintiff with a huge dilemma. The writ could not be re-served for having expired years back; O. 7 r. 6(2) of the Rules of the High Court 1980 provided that "the court may by order extend the validity of the writ from time to time for such period not I exceeding 12 months at any one time"; and the plaintiff could also not re-file a claim against him because it would be time-barred.

[22] Ingeniously, the plaintiff then simultaneously filed eight separate applications, each for a twelve-month extension, which if allowed would collectively resuscitate and bring the writ back to life. The defendant naturally objected. When the High Court refused the applications, the plaintiff appealed. In allowing the appeal, Gopal Sri Ram JCA (as His Lordship then was) said:

> Having addressed our minds to the plain words of O. 6 r. 7, and the decided cases in which it has been considered, we are satisfied that the High Court had ample jurisdiction to grant the plaintiff in the instant case the several extensions sought by it of its writ.
>
> Quite apart from O. 6 r. 7, there is wide power under O. 3 r. 5 conferred upon the High Court to extend time. Even the restriction of granting more than one extension of 12 months expressed in O. 6 r. 7 may, in appropriate cases, be overcome by having resort to O. 92 r. 4 (absent in the English RSC) which is a jurisdictional provision. (See *Pacific Centre Sdn Bhd v. United Engineers (M) Bhd* [1984] 2 MLJ 143.)
>
> Further, in a recent and yet unreported judgment of this court, reference has been made to the important principle that a rule of court should not be construed so as to produce unfairness or a manifest injustice. (See *Sim Seoh Beng & Anor v. Koperasi Tunas Muda Sungai Ara Bhd*, Court of Appeal Civil Appeal No P-02-7-94 (since reported in [1995] 1 MLJ 292).) Surely, this principle may be invoked to overcome any technical obstacles in the way of achieving substantial justice in a case where a pedantic approach to a rule of court will result in injustice.
>
> In the premises, we are satisfied that the learned judge was clearly wrong in holding that the court had no jurisdiction to the make the orders it did.

[23] Based on this *Arab-Malaysian Credit* case, the plaintiff similarly urged me to extend the validity of the writ for a sixth time so as to prevention injustice to it.

Analysis And Decision

[24] Having read them most carefully, I find that the relevant authorities the plaintiff relies on in reality support an application to extend the writ. If this were an application to extend the duration of writ simpliciter for one of the five times allowed by O. 6 r. 7(2), then on the uncontroverted and uncontested evidence of the plaintiff, I dare say that the plaintiff has adduced sufficient grounds for extending the writ. That was indeed probably why the plaintiff managed to get the previous five extensions. However, that is not the real issue on this occasion.

[25] The real issue here is whether this court can use its inherent powers and jurisdiction under O. 92 r. 4 of the Rules to extend the writ for a sixth time, and thereby override the express terms of O. 6 r. 7(2) of the Rules of the High Court 1980.

[26] None of those cases the plaintiff cited concerned this particular issue.

[27] Order 92 r. 4 provides:

> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[28] As much as 1 sympathise with the plaintiff and am very much appreciative of learned counsel's valiant efforts to persuade me, I am of the view that I cannot exercise that inherent power in this case. I have two main reasons for saying so, and they are inter-connected and not entirely distinct.

[29] Now to those two reasons, firstly, the inherent powers of the court should only be exercised where there is a lacuna in the rules. In *Yomeishu Seizo Co Ltd & Ors v. Sinma Medical Products (M) Sdn Bhd* [1996] 2 BLJ 142; [1996] 2 MLJ 334, VC George said:

> However, where there is a lacuna in the rules and practice, then and only then, may the aforesaid inherent jurisdiction be invoked.

[30] The adjunct to that is that, where there is no lacuna and the Rules contain provisions for a given scenario, the court will not invoke its inherent jurisdiction.

[31] In *Permodalan MBF Sdn Bhd v. Tan Sri Datuk Seri Hamzah Abu Samah & Ors* [1988] 1 CLJ 31; [1988] 1 CLJ (Rep) 244; [1988] 1 MLJ 178, Syed Agil Barakbah FJ said:

> Order 92 rule 4 RHC provides:
>
> For the removal of doubts it is hereby declared that nothing in these rules shall be deemed to limit or affect the inherent powers of the court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the court.
>
> We read this to mean that the rules cannot interfere with the exercise of the inherent powers by the court so long as it deems it necessary to prevent any injustice or any abuse of its own process. It follows that where the rules contain provisions making available sufficient remedies, the court will not invoke its inherent powers.

[32] However, there is no lacuna here; O. 6 r. 7(2) prescribes the maximum number of times a writ in rem can be extended, it states:

> Subject to paragraph (2A), where efforts to serve a writ on a defendant have been unsuccessful, the Court may by order extend the validity of the writ twice (in Sabah and Sarawak thrice **and in admiralty actions five times**), not exceeding six months at any one time, beginning with the day next following that on which it would otherwise expire, as maybe specified in the order. (emphasis added)

[33] Secondly, the renewal of a writ is only needed if service is not effected during its validity. That is evident from the words in O. 6 r. 7(2). Thus, the purpose of this rule is exact, and is only for renewing the validity of writs that have yet to be served.

[34] Prior to 21 September 2000, the equivalent O. 6 r. 7(2) of the Rules of the High Court 1980 did not specify any limit to the number of times a writ could be renewed. It only provided that "the court may by order extend the validity of the writ from time to time for such period not exceeding 12 months at any one time." Theoretically, a writ could be renewed over and over and over again as long as cogent explanation were repeatedly provided explaining why it had not been served.

[35] Amendments to the Rules are made by the Rules Committee, which is headed by the Chief Justice and consists of carefully selected members of the Bench and the Bar, as well as the Attorney General or his representative. It is they who had deliberated and decided that O. 6 r. 7(2) Rules of the High Court 1980 should be amended:

(i) by reducing the lifespan of a writ at first instance from 12 months to six months;

(ii) by limiting the number of times, a writ could be extended *ie*, twice in Peninsular Malaysia, thrice in Sabah & Sarawak, and five times in admiralty actions; and

(iii) by mandating that the application for extension must be made before the expiry of the writ.

[36] That amendment came about by PU(A) 342/2000 and took effect from 21 September 2000.

[37] When the Rules of Court 2012 replaced the Rules of the High Court 1980, the amended O. 6 r. 7(2) Rules of the High Court 1980 was accepted *in toto*.

[38] It is clear from PU(A) 342/2000 that in 2000 the Rules Committee of the time recognised the need to fix a number of times a writ could be extended. It permitted only two extensions for ordinary writs in Peninsular Malaysia and at the same time acknowledged that a writ in Sabah and Sarawak should (perhaps for geographical considerations) be allowed to be extended three times. It also decided that writs in admiralty actions should be allowed more extensions than the ordinary writ, but up to five. For the latter, it can be reasonably assumed that this was because the Rules Committee acknowledged the fact that a writ in rem had to be served on the vessel concerned as and when it happened to be in Malaysian waters and thus service was not necessarily within the plaintiff's control. Nevertheless, the Rules Committee still thought it necessary to put a cap on the number of extensions that could be made.

[39] It is for that same reason, I am unable to accept the plaintiff's application of those case authorities from England, Singapore, Hong Kong and Australia that granted an infinite number of extensions of writs in admiralty in rem actions for as long as the vessel did not enter their waters. Unlike our Rules, their rules of procedure do not set a limit on the number of times a writ in an admiralty action can be extended.

[40] Interestingly, the Singapore's Rules of Court 2021 recently for the first time imposed a limit on the number of times an ordinary writ could be extended but maintained that there would still be no limit as to how many times a writ in rem could be extended. That was gazetted on 1 December 2021 and came into operation on 1 April 2022.

[41] The new O. 6 r. 3 provides:

> Duration and renewal of originating claim or originating application (O. 6, r. 3)
>
> (1) Subject to this Rule, an originating claim or an originating application is valid for service for 3 months beginning with the date of its issue.
>
> (2) An application may be made to extend the validity of the originating claim or originating application if it has not been served on all or any of the defendants before or after it expires.
>
> (3) The Court may order the validity of the originating claim or originating application to be extended by a period beginning with the day next following that on which the originating claim or originating application would otherwise expire.
>
> (4) Except in a special case, the Court may extend the validity of the originating claim or originating application only twice and by not more than 3 months each time.
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> (5) The originating claim or originating application in respect of which validity has been extended must be endorsed with the words, "Renewed for service for __ months from ___ by order of Court dated ___" before it is served.
>
> (6) Paragraphs (1) and (4) do not apply to an originating claim relating to Admiralty causes and matters.

[42] Our Rules Committee here could just have easily done that in 2000 but did not. I must therefore defer to their decision not to do so and to fix the number of renewals.

[43] In *Yomeishu Seizo Co Ltd & Ors v. Sinma Medical Products (M) Sdn Bhd* [1996] 2 BLJ 142; [1996] 2 MLJ 334, VC George J said:

> The court has always had an inherent jurisdiction to regulate its own proceedings. Order 92 r 4 of the Rules of the High Court 1980 recognises this to be the position. *However, that is not to mean that the judge may ignore express rules of court and make his own rules of practice and procedure inconsistent with written rules and time-honoured practices.* There is no doubt that from time to time, established rules and practices become outdated. For instance, there are rules and practices that make for extended trials. Some of these rules and practices could perhaps be done away with or at least streamlined. New rules could be brought in.
>
> However, it is not open to individual judges or even for the conference of judges to take it upon himself or itself to do a way with or streamline or adopt innovative procedures. *However well-intentioned, that sort of thing, if permitted, could lead to a form of anarchy! If changes are called for, what has to be done is to have the rules committee – the members of which are carefully selected from the Bench and from members of the Bar and includes the Attorney General or his representative and which is headed by none other than the Chief Justice – give due consideration to the new ideas and have the rules duly amended.*
>
> *And until such amendments are effected, the old rules and practices cannot be ignored and new procedures may not be implemented.* However, where there is a lacuna in the rules and practice, then and only then, may the aforesaid inherent jurisdiction be invoked. (emphasis added)

[44] Likewise in Singapore, in *Samsung Corp v. Chinese Chamber Realty Pte Ltd* [2004] 1 SLR (R) 382, Chao Hick Tin JA said:

> *We endorse the views of the judge that generally where the Rules of Court have expressly provided what can or cannot be done in a certain circumstance, it is not for the court to override the clear provision in exercise of its inherent powers. No court should arrogate unto itself a power to act contrary to the Rules. The rule making powers are conferred upon the Rules Committee.* The court should not usurp the powers and functions of the Rules Committee:
>
> See *The Siskina* [1979] AC 210. If, in its opinion, what is clearly provided in a particular rule is undesirable or unjust, the course which the court should take would be to offer its views on it for the consideration of the Rules Committee but not to amend it, or bend it, to reflect what it thinks is just or more desirable. (emphasis added)

[45] Based on these authorities, I would hold that O. 92 r. 4 of the Rules does not allow me to override the express intentions of the Rules Committee to fix the number of extensions to a writ in an admiralty action. Since the Rules Committee had set a five-time limit to extend a writ in rem, it does not lie for this court to usurp the powers and functions of the Rules Committee.

[46] Also, if I allow the extension this time, where do I draw the line? What if the writ is still not served within the next six months or the next six after that, for the same reasons? Does the court still grant those next extensions?

[47] Further, does that mean the writs under O. 6 r. 7(2) that can only be extended twice or thrice can also be extended beyond those caps?

[48] As the line was drawn by the Rules Committee over 20 years ago, then I do not think I have the power or authority to overstep it.

[49] That is also why I also declined to follow the decision in the *Arab-Malaysian* case. Order 6 r. 7(2) (then as it still stands now) contained the words "at any one time" which means only one application at a time. That decision was also not in respect of and was prior to the introduction of a cap on the number of times a writ could be extended.

[50] In my own research I came across the local decision on Kang Hwee Gee J in *South Johor Securities Sdn Bhd v. Alexander Codsi* [2007] 9 CLJ 145; [2007] 8 MLJ 527. In that case:

> The amended O. 6 r. 7(2) which provides that a writ may be extended twice does not prohibit the registrar from extending the writ more than twice where the justice of the case requires. By the use of the word 'may' it is clear to me that the amendment was intended to provide some restrictions on the registrar's discretion, but not to the extent of fettering him where circumstances justify, to order extensions more than twice. Had it been the object of the Rule to prohibit the extension of a writ more than twice, it would so provide for it in clear and absolute terms.

[51] However, I would respectfully decline to follow that decision. In my view, the words "may" refer to the discretion in the court to allow or refuse an application to extend the validity of the writ even if the application is done within the permitted number of times. But it does not allow place the number of extensions at the discretion of the limits. If the Rules Committee had intended that the number of extensions be left within the court, then it would not have made any changes to O. 6 r. 7(2).

[52] I would finally note that, for over 20 years now O. 6 r. 7(2) has remained as it was amended in 2000. That means that the various Rules Committees in that time have seen it fit for the limit on the number of extensions to subsist.

[53] As for the plaintiff's contention that I could invoke O. 3 r. 5(1) extend the writ, I do not agree. That rule is to "extend or abridge the period within which a person is required or authorised by these Rules or by any judgment, or order or direction, to do any act in any proceedings." It is a general provision. Under the principle of *generalibus specialia non derogant*, the court is bound to apply O. 6 r. 7 for all matters regarding extensions of writ because it is specific to that issue.

[54] It is for these reasons that I dismissed encl. 46 with no order as to costs.